

August 6, 2013

Richard J. Augustine
4715 Nolan Place
El Cajon, CA 92020

Re: Your Request for Advice
Our File No. A-13-094

Dear Mr. Augustine:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the “Act”).¹ This letter is based on the facts presented; the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) In addition, our advice is based solely on the provisions of the Act.

QUESTION

Does the Act prohibit you from accepting more than five tickets to San Diego Padres games from an individual with whom you have a close personal friendship?

CONCLUSION

No. Even if you determine that Mr. Jackman is a reportable source under your conflict of interest code, you may accept more than five San Diego Padres game tickets if you qualify for the exception under Regulation 18942(a)(17)(C) and (D)(i through iii).

FACTS

You provided the following facts:

You are currently a Member of the San Miguel Fire Board. Until last year, Larry Jackman was also a San Miguel Fire Board Member. He is no longer on the board. You and

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Mr. Jackman have been friends for more than ten years. You and Mr. Jackman became friends while serving together on the board, but that close personal friendship has continued past his retirement from the board. He is not a lobbyist, nor does he do business with the San Miguel Fire District. Until this year both of you had season tickets to the San Diego Padres. Now, you no longer have a season ticket package. Neither you, nor Mr. Jackman, foresee him ever coming before the board on any business issues.

If the Act's gift restrictions apply, you would be limited to a maximum of five tickets per year.²

Per our request, we have been provided with a copy of your current conflict of interest code.³ Under this code, a designated employee in your category is required to disclose income, including gifts, from any "Agency-related source." Neither the code, nor the Act (which definitions are incorporated by the code), define agency-related source.

ANALYSIS

Subject to certain exceptions (see Section 82028(b) and Regulation 18942, the term "gift" is defined in Section 82028(a) as:

"Any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status."⁴

In an effort to reduce improper influences on public officials,⁵ the Act regulates the receipt of gifts by public officials in three ways:

First, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gifts aggregating to \$50 or more from the same source received during the calendar year be disclosed on the

² Generally, gifts are valued at the fair market value of the gift (Regulation 18946). However, tickets are an exception to this rule and are valued at the face value of the ticket (Regulation 18946.1). This exception was created because of the alleged difficulty in determining the fair market value of tickets after an event has sold out and the tickets are in high demand. It thereby placed a fixed value on the ticket.

³ You provided a copy of your conflict of interest code that was adopted in August 1988 (it is in need of updating to at least reflect current thresholds in the Act).

⁴ Section 82044 defines payment, in part, as any "rendering of ... services or anything else of value, whether tangible or intangible."

⁵ A "public official" is "every member, officer, employee, or consultant of a state or local governmental agency." (Section 82048.)

officials' statements of economic interest. Reporting requirements apply to all officials listed in Section 87200 (Section 87202), all candidates for an office specified in Section 87200 (Section 87201), and employees designated in an agency's conflict-of-interest code (Section 87302(b)).

Secondly, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$440 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to all elected state and local officials or other individuals designated in Section 87200; all candidates for state, local, or judicial office; and any employee designated in his or her agency's conflict-of-interest code, if the employee would be required to disclose the receipt of income or gifts from the source of the gift on his or her statement of economic interest. (Section 89503.)

Finally, the Act prohibits any public official from making, participating in making, or using his or her official position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$440 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 and 87103(e); Regulations 18700 and 18703.4.)

As stated above, a gift is only limited if it is from a source that you are required to report under your agency's conflict of interest code. Your code only requires you to report gifts from an "Agency-related source." You indicated that Mr. Jackman does not have any business before the agency, so it is possible that you would not have to report any gifts from him in the first place. However, because codes are "formulated at the most decentralized level possible," you should check with your agency to determine if Mr. Jackman is considered a reportable source.

If you determine that Mr. Jackman is a source that would be required to be reported under your conflict of interest code, he would be prohibited from accepting any Padres tickets with a aggregated value of more than \$440 in a calendar year unless the gift meets one of the exceptions provided under Section 82028 or Regulation 18942.

The Commission has recognized that the purposes of the Act are not served by the regulation of certain types of gifts that are based solely upon long standing personal relationships that are not connected to any official governmental position. Regulation 18942(A)(17)(C), therefore provides an exception to the definition for item received based upon a long term close personal friendships unrelated to the official's position with the agency. This exception would apply unless the individual providing the benefit to the official is a:

- A lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 of the Act and who is registered to lobby the official's agency;⁶ or

⁶ Chapter 6 of the Act only applies to persons who lobby state agencies and therefore would not apply to your facts.

- A person who has, or may reasonably foreseeably have, a contract, license, permit, or other entitlement for use pending before the official's agency, and for 12 months following the date of a contract is signed or financial decision is rendered in the proceeding, if the official makes or participates in making a governmental decision; or
- A person, or the agent of a person, involved in a licensing or enforcement proceeding before a regulatory agency that employs the official and in which the official may reasonably foreseeably participate, or has participated, within 12 months of the time the gift is made. (Regulation 18942(a)(17)(C) and (D)(i through iii.)

The San Diego Padres tickets provided by Mr. Jackman would not be characterized as a gift to you if they were provided based on your long-term personal relationship. However, a long term close personal friendship with Mr. Jackman and the fact that he does not engage in any activities with San Miguel Fire District, as set forth in 18942(a)(17)(D)(I through iii).

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Emma Olson
FPPC Intern

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